

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HANGZHOU CHIC INTELLIGENT
TECHNOLOGY CO. and UNICORN
GLOBAL, INC.,

Plaintiffs,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A,"

Defendants.

Docket No. 20 CV 4806

Chicago, Illinois
November 10, 2022
4:02 p.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS - Status Hearing
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

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1 (Proceedings heard telephonically.)

2 THE COURT: All right. Emily, please call the case.

3 THE CLERK: All right. This is Case No. 20 CV 4806,
4 ABC Corporation v. The Defendants Identified on Schedule "A."

5 Could I please have the attorney present on behalf of
6 the plaintiff state their name.

7 MR. LOMUSCIO: Richard Lomuscio, Tarter Krinsky &
8 Drogin, on behalf of plaintiffs, and I have with me my
9 colleague Mark Berkowitz as well.

10 THE COURT: Okay.

11 MR. MATHEW: This is Anand Mathew on behalf of the
12 plaintiffs, too.

13 THE CLERK: And on behalf of defendant, please.

14 MR. YAO: Good afternoon, Your Honor. This is
15 Attorney Yu-Hao Yao appearing on behalf of defendants. I have
16 my colleague --

17 COURT REPORTER: I'm sorry; you broke up. You need
18 to repeat that, please.

19 MR. YAO: Yes. Good afternoon, Your Honor. This is
20 Attorney Yu-Hao Yao appearing on behalf of the defendants, and
21 I have my colleagues Queena and Wei on the line as well.

22 THE COURT: Okay. We received a motion for a
23 temporary restraining order and preliminary injunction filed
24 by the plaintiff, and then we received an email from defense
25 counsel objecting to certain aspects of it. We noted that

1 really if you have objections, you ought to put it on the
2 docket, but the critical thing was there is a briefing
3 schedule proposed in the motion, relatively prompt briefing
4 schedule proposed by plaintiffs, defendants object to it and
5 propose a much more leisurely response date back in -- all the
6 way up to January, and a reply.

7 My first question is -- and excuse me one second. I
8 have a question from a jury on an unrelated case. Off the
9 record for a moment while I just look at this.

10 (Off the record.)

11 THE COURT: Okay. Back on the record.

12 I saw in the docket entries that Judge Cole had set
13 discovery schedules, the parties had reported to him that they
14 had completed discovery, including expert discovery, and that
15 you were not interested in a settlement conference so he sent
16 the case back to me, essentially. He had suggested dates for
17 the filing of a summary judgment motion, but those were
18 suggestions and were not something I have adopted.

19 Why are we even doing injunctions at this point when
20 if discovery's over, I assumed -- and tell me if I'm wrong --
21 one party or the other is going to file a summary judgment
22 motion?

23 First, from plaintiff.

24 MR. LOMUSCIO: Sure. Your Honor, Richard Lomuscio,
25 Tarter Krinsky & Drogin, on behalf of plaintiffs.

1 The reason we're filing a preliminary injunction
2 motion now, Your Honor, is based upon the recent Federal
3 Circuit decision which vacated the existing preliminary
4 injunctions that were in place in this case --

5 THE COURT: I'm familiar --

6 MR. LOMUSCIO: -- which happened about a week -- a
7 week and a half ago.

8 THE COURT: I'm very familiar with the orders.

9 MR. LOMUSCIO: Yes. And the -- and we believe that
10 those -- that the Federal Circuit, you know, had -- their
11 analysis provides a roadmap for continuing a new PI in this
12 case while we complete summary judgment motions. And that is
13 the reason we have made this motion now.

14 THE COURT: All right. Well, they certainly did --
15 and I'll hear from defendants in a minute -- they certainly
16 did object to the process that I followed in granting the
17 preliminary injunction motion, and there was a question as to
18 whether the -- there's proper notice and also whether the
19 analysis was proper, and the Court found that it wasn't, and I
20 agree with you, they did at least explain what I should've
21 done. And that's fine.

22 And certainly, that's the -- that's the rule we'll
23 have to follow on this, but it seems as if we're -- if there's
24 going to be a preliminary injunction hearing, it will be a
25 hearing. You're going to have witnesses brought in, for both

1 sides, and it's in effect going to be a mini trial.

2 If there is a summary judgment -- intent to file
3 summary judgment by one side or the other, I'm wondering about
4 the utility for doing that when that may end up being
5 dispositive if we have a summary judgment motion.

6 I don't know, does plaintiffs intend to file a
7 summary judgment motion?

8 MR. LOMUSCIO: Not at this time, Your Honor.

9 THE COURT: Okay. And how about on defense side?
10 I'll let you comment on what plaintiffs' counsel has just said
11 on all the subjects he raised.

12 MR. YAO: Thank you, Your Honor. So, Your Honor,
13 this is Attorney Yu-Hao Yao appearing on behalf of defendants
14 and also from Glacier Law LLP.

15 Actually, so, you know, this is the plaintiffs' third
16 bite at the preliminary injunction, which, you know, it's
17 just -- it would be extremely prejudicial to defendants when,
18 you know, as we talked about, the expert discovery has already
19 closed, the fact discovery period has already closed,
20 you know, also defendant is also planning to file a motion for
21 summary judgment, and it would just -- does not make sense to
22 have another PI and TRO when the, you know, summary -- motion
23 for summary judgment would be dispositive and given that,
24 you know, it's the third attempt, which I know the Federal
25 Circuit has laid out a roadmap, but also addresses the

1 deficiency in the previous preliminary injunction orders so
2 that it does not make sense for plaintiffs to continue to file
3 preliminary injunctions when it's already at this stage of the
4 litigation --

5 THE COURT: Are you still selling --

6 (Indiscernible crosstalk.)

7 THE COURT: I'm sorry to interrupt. Are you still
8 selling the allegedly infringing products?

9 MR. YAO: Well, I mean, I haven't -- I have to
10 confirm that with my client, you know, but I'm pointing to the
11 preliminary injunction -- according to the Federal Circuit
12 order, that one has -- the preliminary injunction was vacated,
13 but we're still confirming it with the -- the process with
14 Amazon and all that stuff, but I would have to confirm that
15 with my client.

16 THE COURT: I understand. And you were not selling
17 it for quite some time. There was a bond posted and,
18 obviously, if you're correct that it was an improper
19 injunction or that plaintiffs can't prevail, you may be
20 entitled to some type of damages relating to lost sales.

21 But if you're not selling it -- if you weren't
22 selling it during the preliminary injunction period, I know
23 there was some question about whether you were or not, because
24 I think there was some contempt issues relating to that, but
25 if you're not selling it now and you intend to file a summary

1 judgment, I need to know whether you intend to keep -- intend
2 to start selling it. If you are, it doesn't matter how many
3 times the plaintiff has sought summary -- sought preliminary
4 injunction. I have to follow what the Fed Circuit rule is
5 and, understandably, you know, follow the roadmap they gave as
6 to whether or not an injunction could be properly entered.
7 But it doesn't matter if it's been entered in the past and
8 been vacated.

9 But I don't want to be doing this if your client, at
10 least in the -- for a period of time while summary judgment
11 briefing is going on doesn't intend to sell their product. If
12 they do and plaintiffs want to try and enjoin that, then
13 they're entitled to do it, but it's going to cost each side, I
14 would think, some amount of resources and certainly amount of
15 time because what's very clear from the -- from what the
16 Fed Circuit said is I need to have an in-person hearing with
17 your experts on each side testifying, and I need to carefully
18 analyze the evidence and use the -- as they said, the roadmap
19 from the Fed Circuit in making a decision whether to grant the
20 preliminary injunction or not.

21 But it's a waste of everyone's time if your client
22 doesn't intend to sell the product while a summary judgment
23 motion gets briefed and decided. So I think if --
24 understandably, you may not know the answer to that right now,
25 but I think it's something you need to check with your client.

1 If they do want to sell the product, then plaintiffs
2 are entitled to seek preliminary injunction. If they don't,
3 then we ought to just proceed with the matter of summary
4 judgment briefing. And it's almost a self-imposed injunction
5 at that point by the defendants. Your client may not want to
6 do that, and that's fine. There's no law that requires them
7 at this point to -- that prevents them, rather, from selling
8 their product.

9 So I really don't want to spend much more time on
10 this right now, but I'd like you to consider that and find out
11 what your client's intentions are from the defense side, talk
12 it over with plaintiffs, and I'd like you all to think about
13 what is the utility -- what's the most expeditious way to get
14 a resolution to the case.

15 You can't settle. You -- Judge Cole asked about that
16 and the parties said no, and that's fine; there's no need to
17 settle. But if we're going to have a preliminary injunction
18 briefing, and I can assure you after that briefing, we're
19 going to have a hearing, and when I can do that hearing is
20 a -- I'll give it with all due haste after the briefing is
21 completed.

22 And if, in fact, your client isn't going to settle --
23 sell these hoverboards, it's not enough of a -- well, whatever
24 the business interests are on that, then we shouldn't be
25 wasting our time on an injunction hearing because there's no

1 irreparable harm if you're not selling anything.

2 So I'll welcome any comments briefly, but that's what
3 I have to say on this, and I'll probably have you back in on a
4 phone call next week sometime to give me the results of what
5 you've reached any type of resolution or proposed path going
6 forward given what I've said.

7 So I'll hear first from plaintiff, then I'll hear
8 from defendant.

9 MR. LOMUSCIO: Yeah, thank you, Your Honor.

10 Our -- our -- we'll obviously discuss this with
11 defendants, you know, but our -- our view is that there is,
12 you know, a -- I guess a voluntary injunction in place and
13 we're moving to summary judgment. We -- we would be amenable
14 to that. Our issue really is that -- that no sales of the
15 products occur while -- while this issue is pending.

16 THE COURT: Well, I think at this point it's unlikely
17 you're going to prevent sales until I decide a preliminary
18 injunction motion. I'm not going to enter -- you know, the
19 TRO and the preliminary have essentially the same standards in
20 the Seventh Circuit, and again, I'm not going to decide that
21 if there's intent by the defendants to sell their product
22 until we've had a hearing.

23 And looks like there's -- from that email that I
24 received, there's going to be some contest as to whether or
25 not your revised expert report from Mr. Hatch is going to be

1 able to be used, and there's a variety of other preliminary
2 issues we would have to decide.

3 I can tell you schedulewise, I have a trial starting
4 in -- two trials in January, one of which will last through
5 April. So if we don't get this done in December, it's going
6 to take some time to get done. So keep that in mind on
7 your -- on any briefing schedule you propose for a preliminary
8 injunction, which is just a matter of information telling you
9 what my schedule is.

10 MR. LOMUSCIO: Thank you, Your Honor.

11 THE COURT: It doesn't mean I can't hear this on
12 possibly -- the trials will -- the lengthy trial will go four
13 days a week, so I can hear you on consecutive Fridays. We may
14 not finish an injunction hearing on a Friday, but I can hear
15 you on one Friday and the next Friday and the next Friday. I
16 wish it weren't that way. I know it's inconvenient for the
17 parties and the witnesses, but that's the best I can promise
18 you if we bleed into 2023.

19 Okay. Let's hear from defendant.

20 MR. YAO: Thank you, Your Honor. So given to the
21 first point, so I will have to confirm with my client whether,
22 you know, they have resumed [inaudible] and they'll provide --
23 we'll file an update with the Court once I confirm with my
24 client.

25 And second, I looked at the plaintiffs' motion for

1 preliminary injunction and TRO, they attempt to restrain a
2 dismissed party that was -- a party that was already dismissed
3 from this case. It was Jiangyou-US. That was already
4 dismissed by this Court back in June, and then plaintiffs
5 decided to bring a motion for PI and TRO again against that
6 dismissed party which, you know, is prejudicial when the party
7 has already been dismissed. And --

8 THE COURT: I expect -- on that one -- let me
9 interrupt. On that one, I would expect you to consult with
10 plaintiffs' counsel and resolve that. It sounds like it -- if
11 it's a party that's been dismissed for a -- and I'd have to go
12 back and look at the docket and review the reasons for it, but
13 I would discuss that with plaintiffs' counsel and see if
14 that's a mistake or whether that was intentional to seek to
15 enjoin that party, and remind them, because they're new
16 lawyers on this, they were not involved back at that time, I
17 think, of what the litigation was relating to that party.

18 Go ahead. I interrupted you.

19 MR. YAO: No problem, Your Honor. The briefing
20 schedule, you know, as I said, back -- defendants filed a
21 motion for summary judgment or -- as of right now, planning to
22 file in November and the response time is just -- it'll be too
23 short given that defendants will have to respond to this
24 motion for a TRO and PI at the same time it's preparing for a
25 summary judgment, so I think that, you know, as we indicated

1 in the email, that push back the response time until at least
2 January is -- it will just be the best interest for both
3 parties.

4 THE COURT: Well, best interest for your -- from your
5 party, one party. Not in the --

6 MR. YAO: Yeah.

7 THE COURT: -- best interest of plaintiffs. It's in
8 the best interest of your client, which is who you're
9 representing.

10 What I don't want to do, hopefully, is have you
11 briefing a preliminary injunction and briefing summary
12 judgment at the same time. That's an awful lot of attorney
13 hours, expense to your client, and I'm not sure it advances
14 the case in a productive way. Maybe that's the only way we
15 can do it, but what I'm going to ask you to do is come back
16 for a call next week.

17 Emily, what day can we do it? I'm just looking at
18 the call sheets.

19 THE CLERK: We can do Tuesday if you like. Or
20 Thursday.

21 THE COURT: Let's do Thursday. I think that's --
22 what day is that, the 17th?

23 THE CLERK: Yes.

24 THE COURT: Let me just look at the schedule that
25 day. Yeah, let's do Thursday.

1 Are the parties available for a call Thursday
2 morning?

3 MR. LOMUSCIO: Plaintiffs are, Your Honor.

4 MR. YAO: What time?

5 THE COURT: Pardon me? It will be 9 o'clock.

6 MR. LOMUSCIO: Plaintiffs are, Your Honor.

7 THE COURT: Okay. And defendants?

8 MR. YAO: That works for defendants as well,
9 Your Honor.

10 THE COURT: Okay. I would ask, though, that you meet
11 and confer on the issues I've raised. I think you ought to
12 look for practical ways to resolve the litigation one way or
13 the other in an as least costly a way as possible for your
14 clients, and then also -- you know, given all the issues I've
15 raised.

16 Hopefully, you can come up with a plan that works,
17 but if we are compelled to do a preliminary injunction
18 hearing, it will be live, it will be in my courtroom, and the
19 briefing will have to be such that it's completed before I
20 hold the hearing and the time is getting short for a hearing
21 possibly this year. I have other matters and bench trials
22 set, and I've given you my schedule starting in January, so
23 keep that in mind when you decide how we would conduct a
24 hearing.

25 Okay. Anything else from plaintiff?

